

In the absence of acceptance of a purchase order in Illinois, the location of the sale is considered to be where the inventory from which the order is filled is maintained in the State. See 86 Ill. Adm. Code 270.115(b)(3). (This is a GIL).

May 20, 2005

Dear Xxxxx:

This letter is in response to your letter dated October 26, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

We are a distributor in Illinois. We are located in CITY/STATE. We do not have any physical locations in Illinois. We distribute motor fuels to our customers, who order the fuel by contacting our office in CITY/STATE. We take ownership of the fuel at the Illinois terminal rack; therefore, we charge our customers the state and local sales tax that is applicable to the county of the terminal. We, then, remit the amount collected to the Department of Revenue on a monthly basis.

We have talked to other Illinois resellers that tell us they charge the sales tax based on where they receive the purchase order. Therefore, since we are in Georgia and we do not have a physical presence in Illinois, should we only be charging the 6.25% state sales tax rate and no local tax at all?

The reason we are asking for a private letter ruling is that this question has come up more than once over the last four years and we need a definitive resolution. The Department of Revenue has audited us, since beginning business in Illinois and no mention of incorrect billing was made.

If you need any further information, feel free to contact me at the number below.

DEPARTMENT'S RESPONSE:

The County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1, provides that the county board of the counties of DuPage, Kane and McHenry may impose a tax upon all persons engaged in the county in the business of selling motor fuel at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. This tax is imposed, as far as is practicable, in the same manner as the Retailers' Occupation Tax. As a result, the regulations applicable to the Retailers' Occupation Tax, as far as practicable, apply to this tax. There are no separate regulations for the County Motor Fuel Tax.

The regulations governing the Retailers' Occupation Tax are found at 86 Ill. Adm. Code Part 130. The Retailer's Occupation Tax Act defines "sale at retail" as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property..." See 86 Ill. Adm. Code 130.201. The County Motor Fuel Tax further limits this definition to retail sales of motor fuel for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. If a retail sale of motor fuel is not for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways, then the sale is not subject to County Motor Fuel Tax.

Please see 86 Ill. Adm. Code 270.115, which explains how to determine the applicability of a Home Rule Municipal Retailers' Occupation Tax. These principles apply to other types of local taxes as well. As you can see, the tax is incurred when sellers engage in the business of selling in a jurisdiction imposing the tax. It is the Department's position that the most important element in selling is the acceptance of the purchase order. Consequently, the location at which the purchase order is accepted determines the proper tax rate. Absent clear proof to the contrary, the Department will assume that retailers have accepted the purchase order at the place of business at which the retailers received the purchase order (retailers' location). In the absence of acceptance of a purchase order in Illinois, the location of the sale is considered to be where the inventory from which the order is filled is maintained in the State.

Applying the above stated analysis wherein the purchase order is received out-of-State, the location of the sale shall be where the inventory from which the purchase order is filled is maintained in this State (i.e. at the Illinois terminal rack). Retailers' Occupation Tax and any applicable local taxes for this location (the Illinois terminal rack) would be incurred on all retail sales of motor fuel to Illinois customers.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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